

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Rosenberg Meir Confirmation No.: 9738  
Appln. No. : 10/601,455 Art Unit : 3761  
Filed : June 23, 2003 Examiner : DEAK, LESLIE R  
Title : Implantable Medical Device Having Pressure Sensors For Diagnosing The Performance Of An Implanted Medical Device

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January 19, 2010  
(Date of Deposit)

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(Name)

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Commissioner for Patents  
P.O. Box 1450  
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COMMENTS FOR PRE-APPEAL BRIEF REVIEW

Dear Sir:

This paper is filed in reply to the Final Office Action mailed November 16, 2009. Claims 1-41 and 43-46 are pending in the application. Claim 42 has been canceled.

Claims 1-24, 38-44, and 46 stand rejected under 35 U.S.C. 1 03(a) as being unpatentable over US 6,585,677 to Cowan, Jr. et al in view of US 6,248,080 to Miesel et al, further in view of US 7,371,223 to Couvillon, Jr. et al.

Claims 25-30, 37, and 45 stand rejected under 35 U.S.C. 1 03(a) as being unpatentable over US 6,585,677 to Cowan, Jr. et al in view of US 4,206,762 to Cosman, further in view of US 7,371,223 to Couvillon, Jr. et al.

Each of the independent claims have been previously amended to positively recite that either the first and second pressure sensors, the differential pressure sensor and/or the CPU is non-invasively wirelessly powered. In response to this amendment, the Examiner has admitted that both Cowan and Miesel fail to disclose that the pressure sensors and controllers are non-invasively wirelessly powered. The Examiner is relying on Couvillon for the teaching of an implantable fluid control device (a bypass pump) "that may use waveform data sent to a receiver *that powers* an implanted component in order to reduce size of the control unit" and ""depending on the procedure time ... a battery **can** be used as a source for power." (emphasis added) The Examiner points to column 12, line 28-39 and 53-55 of Couvillon for support of these statements. The Examiner then concludes that it would have been obvious to one of ordinary skill in the art to use wireless, non-invasive power, such as that disclosed by Couvillon, to supply power to the apparatus suggested by Cowan and Miesel to reduce the size of the controller, as taught by Couvillon.

This rejection is respectfully traversed. Couvillon does not teach an implantable fluid control device (a bypass pump) that uses waveform data sent to a receiver that powers an implanted component in order to reduce size of the control unit, despite the Examiner's assertion. Couvillon only teaches sending control data (e.g., waveform data) over a wireless communications interface. See column 12, lines 28-30 of Couvillon. "The received waveform data can then be routed to drivers, which power the actuators within the pump." Column 12, lines 38-39. Control unit 150 is provided with a source of power (e.g., a battery). Column 12, lines 52-55. "Data is exchanged with the control unit 250 of the bypass pump via a wireless communication interface. Wireless interface 164a, which is associated with the control and user interface 262, communicates with a remote companion wireless interface 164b, which is associated with the control unit 250." Column 12, lines 52-58. Nowhere does Couvillon teach or suggest that the wireless communication powers an implanted component. In fact, Couvillon teaches away from wirelessly powering the implanted component by making it expressly clear that the implant control unit 150 is provided with its own source of power. Thus, the Examiner has

failed to establish a *prima facia* case of obviousness. Therefore, the present application is in condition for allowance and an early indication of such is respectfully requested.

Claims 15-17 stand rejected under 35 U.S.C. 1 03(a) as being unpatentable over US 6,585,677 to Cowan, Jr. et al in view of US 6,248,080 to Miesel et al, in view of US7,371,223 to Couvillon, Jr. et al, further in view of US 2003/0004495 to Saul et al.

Claims 31-33 are rejected under 35 U.S.C. 1 03(a) as being unpatentable over US 6,585,677 to Cowan, Jr. et al in view of US 4,206,762 to Cosman, in view of US 7,731,223 to Couvillon, Jr. et al, further in view of US 6,428,080 to Miesel.

Claims 34-36 stand rejected under 35 U.S.C. 1 03(a) as being unpatentable over US 6,585,677 to Cowan, Jr. et al in view of US 4,206,762 to Cosman, in view of US7,371,223 to Couvillon, Jr. et al, further in view of US 2003/0004495 to Saul et al.

Dependent claims 15-17, 31-33 and 34-36 are allowable for at least the same reasons that the independent claims are as discussed above. Thus, claims 15-17, 31-33 and 34-36 are allowable and an early indication of such is respectfully requested.

Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0750.

COD5001USNP  
10/601455

Applicants submit that the application is presently in condition for allowance and request favorable reconsideration by the pre-appeal review and early notice of allowance. If it would speed prosecution, the Examiner is encouraged to contact the undersigned attorney by telephone.

Respectfully submitted,

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Dated: January 18, 2010